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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 1116

PAUL A. PORTER, ADMINISTRATOR
OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

DR. LUCAS J. LEE AND HAZEL LEE

No. 1117

PAUL A. PORTER, ADMINISTRATOR
OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

HAZEL LEE AND LUCAS J. LEE, AGENT AND SUE LAKENAN, JUSTICE OF THE PEACE, COVINGTON, KY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court in the first case (R. 20–23) is reported in 59 F. Supp. 639. It

filed no opinion in the second case. The Circuit Court of Appeals filed no opinion.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 8, 1946. Petitions for writs of certiorari were filed in this Court on April 15, 1946. Writs of certiorari were granted on April 29, 1946. The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

In order to forestall an eviction in violation of the Price Administrator's rent regulations and to prevent further violations of the regulations by respondents Lee, the Administrator sued in the United States District Court for injunctive relief. The District Court held that it lacked jurisdiction to interfere with the state court eviction proceeding. An appeal having been taken, the Circuit Court of Appeals denied the Administrator's application for a restraining order pending the appeal. Subsequently, the tenant was forced to vacate the premises. At the time the appeals were argued respondents moved to have the appeals dismissed as moot, and the Circuit Court of Appeals granted the motion. The questions presented are:

1. Whether the court below erred in holding the case moot.

2. Whether the court below abused its discretion in denying the application for a temporary restraining order.

3. Whether the District Court erred in holding that it had no jurisdiction to enjoin the unlawful eviction by the state court.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are the Emergency Price Control Act of 1942, 56 Stat. 23, as amended (50 U. S. C. App. Supp. IV, Sec. 901, *et seq.*), and Rent Regulation for Housing, as amended (10 F. R. 3436, 13528), issued under that Act. The pertinent provisions are set forth in the Appendix, *infra*, pp. 29 *et seq.*

STATEMENT

These causes were consolidated on appeal by an order of the Circuit Court of Appeals, dated October 5, 1945. Throughout this brief, references to the Record in the first case, No. 1116, here, will be shown as "R" and references to the Record in the second case, No. 1117 here, will be shown as "2 R".

Section 2 (d) of the Emergency Price Control Act authorizes the Administrator, whenever such action is necessary or proper in order to effectuate the purposes of the Act, to "regulate or prohibit * * * renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing

accommodations, which in his judgment are equivalent to or are likely to result in * * * rent increases * * * inconsistent with the purposes of this Act." Under the authority of this Section the Administrator has by Section 6 of the Rent Regulation for Housing provided (with exceptions not here pertinent) that so long as the tenant continues to pay the rent to which the landlord is entitled no tenant shall be removed or evicted.[1] Violation of the regulation is forbidden by Section 4 (a), and Section 205 (a) empowers the Administrator to seek injunctive relief against such violations.

On or about June 15, 1942, Robert C. Beever rented an apartment from the respondent, Dr. Lucas Lee, for the sum of Forty-three dollars a month, payable in advance on the 18th day of each month (R. 67). On October 18, 1944, because the tenant's child was ill, his wife was unable to pay the rent due on that day (R. 73). Mr. Beever was employed on a day shift and thus was unable to pay the rent in person (R. 68). However, on the following day, October 19, 1944, Mrs. Beever went to Dr. Lee's office to pay the rent (R. 50–52). Dr. Lee was not in the office, but the janitor, who had on previous occasions accepted the rent (R. 45, 74) and who collected the rent when the respondent Lee was not in

[1] The validity of this provision is not challenged, nor could it be attacked in this proceeding. *Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503.

(R. 101), was present. The rent was tendered to the janitor, but he declined to accept it because he had no receipt book (R. 51, 73). On October 20, 1944, a notice to vacate was served on the tenant (R. 54). On the same day the tenant mailed a money order to respondent Lee for the amount of the rent (R. 61, 62). However, this tender was refused, and the money order was returned by Lee's attorney (R. 56). In the past, Lee had accepted payments of rent one to six days after the date due without objection (R. 44, 62, 68, 74–75). This was also true with respect to other tenants of the respondents (R. 87, 92). Shortly afterward Dr. Lee told the tenant that the real reason for the eviction was not the nonpayment of rent but "the fact that he didn't want children in the apartment any longer", and that "that is the way it is going to be done" (R. 71; cf. R. 58–59).

On October 24, 1944, respondent Lee commenced a Forcible Detainer action in the Justice of the Peace Court of Sue Lakenan to recover possession of the premises by reason of the alleged nonpayment of rent due on October 18, 1944 (R. 102). The trial of this action was continued by the Justice of the Peace to December 4, 1944 (R. 104).

On the latter date the Administrator, alleging that the tenant was not actually in default in the payment of the rent but that the Lees were attempting to evict them in violation of the regula-

tion, brought the first action herein to enjoin the Lees from prosecuting eviction proceedings against "Beever or any other tenant" and to enjoin them from violating the Rent Regulation issued pursuant to the Emergency Price Control Act (R. 2–5). A temporary restraining order was issued by the United States District Court (R. 11), enjoining the Lees from prosecuting the eviction against Beever. The defendants thereafter moved to discharge the temporary restraining order and to dismiss the complaint (R. 15, 16). The motion was heard on oral testimony and documentary evidence (R. 29–108). After a trial, the restraining order was dissolved, an injunction was denied, and the complaint dismissed (R. 26). The District Court held that the state court had concurrent jurisdiction under the Price Control Act, and that the Federal Court accordingly lacked jurisdiction to enjoin the state court proceeding (R. 20–26).

On the landlord's motion, the Forcible Detainer action in the first case was subsequently dismissed without prejudice (2 R. 22). On June 25, 1945, the respondents, Hazel Lee and Lucas J. Lee, instituted another action in Forcible Detainer in the Court of Justice of the Peace Sue Lakenan, asking for a writ of restitution to remove R. C. Beever and his family from his apartment on the ground of non-payment of rent since October 18, 1944 (2 R. 4). In fact, the tenant had paid the rent each month on the due date to his at-

torney, who retained it in escrow pursuant to an agreement with the attorney for the respondent (R. 77). On July 2, 1945, the Justice of the Peace entered a judgment in favor of Hazel Lee and Lucas J. Lee directing the eviction of the tenant Beever (2 R. 15). On July 9, 1945, the Administrator instituted the second action in the United States District Court (No. 1117 here) in which he sought to restrain the enforcement and execution of this judgment by the respondents Hazel Lee and Dr. Lucas J. Lee and by any constable working out of Sue Lakenan's court (2 R. 2–6). On July 13, 1945, respondents' motion to dismiss the complaint of the Administrator was granted on the ground that the court lacked jurisdiction to enjoin the action in the state court (2 R. 16, 28–29).

An appeal was duly taken in each action (R. 27; 2 R. 32). Application was made to the Circuit Court of Appeals for an injunction pending appeal in the first case, but was denied (R. 110–111).

On July 16, 1945 the tenant was served with a writ of possession upon which the Justice of the Peace had written that he must vacate within ten days.[2] The tenant, finding that he had no choice in the matter, in order to keep his furni-

[2] The facts appearing in this paragraph are set forth in the affidavit of R. C. Beever, submitted by the petitioner to the Circuit Court of Appeals in opposition to respondents' motion to have the cause dismissed as moot (R. 112–117).

ture from being put on the street moved it to a friend's basement. He and his family went to live with his wife's parents at Covington, Kentucky for six weeks and then they moved to his parents' home in Michigan where they lived in the basement for five months until he found accommodations to house his family. He stated that at no time was he willing to move out of the premises but did so only because he knew that if he did not he would be put out.

At the argument of the appeal, an affidavit was submitted by the landlord setting forth that the premises had been vacated (R. 111, 2 R. 35), and the Circuit Court of Appeals, on the respondents' motion, dismissed both appeals on the ground that they were now moot (R. 117, 2 R. 36).

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals for the Sixth Circuit erred in dismissing the appeal from the denial of the injunction on the ground that the case had become moot because the tenant had vacated the premises pursuant to the order of the Justice of the Peace.

2. The Circuit Court of Appeals erred in denying a temporary injunction against the eviction pending appeal.

3. The Circuit Court of Appeals erred in not holding that the District Court possessed jurisdiction to enjoin the eviction proceedings in the state court.

SUMMARY OF ARGUMENT

I

The actions brought to restrain unlawful eviction of the tenant and for other relief did not become moot upon the removal of the tenant, pending appeal, under threat of forcible eviction pursuant to the order of the state court. It is established that one who, after the filing of a bill, completes the act sought to be enjoined, may be required to restore the *status quo*." The court could have enforced compliance with the Act by ordering the landlord to offer reinstatement in the premises. If a case were rendered moot when a landlord succeeded in unlawfully evicting a tenant, a serious breach in the rent control system would result because control over evictions is necessary for effective control over rents.

Even if the tenant moved voluntarily and could not be reinstated, the case would not be moot because relief was sought against any other violation of the regulation by the landlord. Under Section 205 (a) of the Act, if the court found that the defendant violated the regulation, it should determine whether an injunction restraining future violations should be issued. Even cessation of violations would not render the case moot.

II

The Circuit Court of Appeals abused its discretion in refusing to stay the eviction pending

appeal. The major harm is done in such cases when the tenant is forced to move, even though he is later reinstated. The later decision of the same court that this very case was moot because the tenant had been evicted means that the denial of a stay would seriously impair the power of the Administrator to control evictions by making it impossible for him to secure review of an erroneous district court decision.

III

The decision of the District Court that it had no jurisdiction to grant the injunction was clearly erroneous. Section 205 (c) in providing for concurrent jurisdiction of civil enforcement suits in state and federal courts does not mean that the federal court is without power to enjoin an unlawful eviction proceeding. An eviction proceeding in a state court is not an "enforcement proceeding"; the jurisdiction of the state court is derived not from the Emergency Price Control Act but from the laws of the state. Congress did not intend that violations committed through unlawful eviction proceedings should be immune from the injunctive power of the federal court under Section 205 (a) of the Act. Since Section 265 of the Judicial Code is not a bar to a federal injunction (as we show in our brief in *Porter* v. *Dicken*, No. 1118), no statute or other rule of law prevents the district court from exercising its jurisdiction to restrain the violation.

The Administrator cannot adequately protect the public if deprived of his right to sue in the federal courts to restrain eviction proceedings in state courts. Intervention in state court proceedings is not adequate for law enforcement purposes for the reasons, among others, that the Administrator's right to appeal is doubtful; and the inferior courts in which eviction proceedings are heard rarely, if ever, have jurisdiction to grant equitable relief against other violations by the landlord. The enormous bulk of evictions makes it impossible for the Administrator to investigate them all. The facts showing a violation of the regulation by the landlord frequently do not appear until the trial; often the Administrator does not know of the case until after a writ authorizing eviction has been granted. No reason appears why the Administrator should be compelled to bring his injunction suit in a state rather than a federal court. Unless the Administrator has the right to federal injunctive relief against unlawful state court evictions the door is left open for widespread circumvention and evasion of the rent and eviction control system.

ARGUMENT

I

THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THE CASE MOOT

The actions below were brought for injunctive relief against the eviction of Beever or any other

tenant and against the commission or continuance of violations of the rent regulation. The case is not rendered moot by the fact that Beever moved out under threat of forcible eviction pursuant to the state court order because the federal court has power to require the Lees to tender possession of the premises to Beever, and to issue an injunction restraining the Lees from other violations of the regulation. A case is not moot so long as there is an actual controversy, and adverse interests with a subject on which the judgment of the Court can operate. *Walling* v. *Helmerich & Payne Inc.*, 323 U. S. 37, 43.

A. The defendants forced Beever to vacate the premises after the institution of an action which had as one of its objects the prevention of his eviction.

The tenants' removal from the premises was in no sense voluntary because it was done only to avoid being forcibly put on the street by the Sheriff acting under the order of the state court. Compliance with a statute or judicial decree in order to avoid great hardship is not a voluntary action but is regarded as having been performed under duress. That the tenants acted themselves is irrelevant. "It always is for the interest of a party under duress to choose the lesser of two evils. But the fact that a choice was made according to interest does not exclude duress. It is the characteristic of duress properly so called." *Union Pacific Railroad Co.* v. *Public Service Commission*, 248 U. S. 67, 70; *Ohio State Bank* v. *Byers*, 282 U. S. 765; *Atchison, T. & S. F. R. Co.* v. *O'Connor*, 223 U. S. 280; *Gray, Scott and Co.* v. *Shannon*, 223 U. S. 468; *Swift Co.* v. *United States*, 111 U. S. 22; *Lovegren* v. *Buffalo*, 148 U. S. 581.

It has long been established that where a defendant in a suit for an injunction commits the act sought to be enjoined after he knows of the suit, the Court may restore the *status quo*. *Texas & N. O. R. Co.* v. *Northside Belt Ry. Co.*, 276 U. S. 475; *Jones* v. *Securities & Exchange Commission*, 298 U. S. 1; *St. Louis S. Ry. Co.* v. *Board of Directors*, 32 F. 2d 124, 125 (C. C. A. 8th); *St. Louis & S. E. R. Co.* v. *Cross*, 171 Fed. 480, 493 (W. D. Okla.) aff'd. 232 U. S. 318.

In *Texas & N. O. R. Co.* v. *Northside Belt Ry. Co.*, *supra*, this Court said (276 U. S. at 479):

> For where a defendant with notice of the filing of a bill for an injunction, proceeds to complete the acts sought to be enjoined, the court may, by mandatory injunction, compel a restoration of the status quo.

In *Jones* v. *Securities & Exchange Commission*, *supra*, the Court, after reviewing the authorities said (298 U. S. at 17–18):

> The conclusion to be drawn from all the cases is that after a defendant has been notified of the pendency of a suit seeking any injunction against him, even though a temporary injunction be not granted, he acts at his peril and subject to the power of the court to restore the status, wholly irrespective of the merits as they may be ultimately decided.

Applying this rule to the precise situation here presented, it has been held that where pending

appeal from an order denying an injunction to restrain eviction the tenant has been evicted, the case was not moot because the court could grant relief by ordering the landlord to tender possession of the premises to the tenants, thereby restoring the *status quo*. In *Henderson* v. *Fleckinger*, 136 F. 2d 381 (C. C. A. 5), the court said (p. 381–382):

> On the argument of the appeal it was suggested that the tenant had now vacated the premises, and the cause is moot. The appellant contends that he is nevertheless entitled to an injunction and to have the status restored. We authorized affidavits to be filed as to the facts. The tenant says she moved out a few days after the injunction was denied [in the district court] to escape bodily eviction under the warrant from the State court. Appellee makes affidavit that the tenant moved voluntarily on Jan. 6, 1943, owing two months and six days rent which has not been paid. We are of opinion that if the tenant was forced out, and if an injunction be finally granted, it would be within the power of the court granting it to order the status as of the time of filing the complaint to be restored. *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1, 2, 56 S. Ct. 654, 80 L. Ed. 1015, and cases cited. The cause is therefore not moot. * * *

The decision below is clearly wrong under the authorities. To allow it to stand would seri-

ously impair the power of the Administrator to make effective his right to prevent unlawful evictions. It would simply mean that no matter how flagrant a violation of the regulation is involved in an unlawful attempt at eviction, if at any time after the injunction suit is filed, a tenant can be forced out of the premises by court proceedings, or otherwise, the Administrator's right to secure compliance with the regulation has been frustrated. Although the wrongdoer may subsequently be enjoined from future violations, a matter which may be of little or no consequence to him, he has achieved his unlawful object.

The public purposes to be served by enforcement of the rent regulations demand that once an injunction suit has been instituted, the landlord be considered as acting at his peril if he proceeds with the eviction, and subject to the right of the court to restore the *status quo*.

Any breach in the system of control created by the Administrator over evictions has an immediate effect upon his control over rents themselves.

"We also believe that if a tenant has been illegally evicted prior to the filing of an enforcement action the Court could require the landlord to restore the premises to the tenant by an "order enforcing compliance" under § 205 (a). A related question is before this Court in *Porter* v. *Warner Holding Co.*, No. 790.

"A tenant in the face of a threat of eviction during a period of housing shortage would be under great pressure to acquiesce in some disguised or roundabout arrangement devised by the landlord to circumvent or evade the rent ceiling.

This Court recognized the relation of the control of evictions to control over rents during an earlier but similar emergency in *Block* v. *Hirsh*, 256 U. S. 135, 157–158, when it said: "If the tenant remained subject to the landlord's power to evict, the attempt to limit the landlord's demands would fail."

B. The case would not be moot even if the tenant moved out voluntarily and even if the *status quo* could not be restored. Under Section 205 (a) of the Act the Administrator may institute an action whenever in his judgment any person has engaged or is about to engage in any acts or practices declared unlawful by Section 4 of the Act. Here he sought to restrain the unlawful eviction of Beever or any other tenant of the defendant, as well as other acts in violation of the regulation (R. 5, 2 R. 6). Certainly if the district court were to find that the Lees had engaged in violations with respect to Beever the Administrator would be entitled in the discretion of the court to a "permanent or temporary injunction, restraining order, or other order" against similar violations. Section 205 (a). The departure of Beever did not render the cause moot any more than a suit

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And if a tenant who refused to pay more than the maximum rent were subject to eviction, the landlord might readily find, among pressing applicants for housing accommodations, someone who would agree to a surreptitious violation of the regulation." *Taylor* v. *Bowles*, 147 F. 2d 833, 834 (E. C. A. 1944).

for an injunction against a store based on sales at unlawful prices to one individual becomes moot when he ceases to patronize the store or dies. A finding by the Circuit Court of Appeals that the tenant had vacated the premises means no more, if the eviction is illegal, than that the defendant has fully completed one violation of the Act. If the defendants did violate the regulation, a matter as to which no findings have yet been made, the court should determine whether or not an injunction or other order should issue in order to prevent future violation. *Hecht Company* v. *Bowles*, 321 U. S. 321. As this court stated in *National Labor Relations Board* v. *Express Publishing Company*, 312 U. S. 426, 435: "A federal court has broad power to restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future, unless enjoined, may fairly be anticipated from the defendant's conduct in the past." Cf. *Bowles* v. *May Hardwood Company*, 140 F. 2d 914 (C. C. A. 6).

Even the cessation of violations before or after the institution of a suit by the Administrator is no bar to the issuance of an injunction under Section 205 (a). *Hecht Company* v. *Bowles*, *supra*, at 327. Cf. *United States* v. *Trans-Missouri Freight Ass'n*, 166 U. S. 290; *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.*, 304 U. S. 257; *Walling* v. *Helmerich & Payne*, 323 U. S. 37, 43.

II

THE COURT BELOW ERRED IN REFUSING TO ENJOIN THE EVICTION PENDING APPEAL

The Circuit Court of Appeals clearly abused its discretion in refusing to stay the eviction pending appeal. We recognize that an interlocutory ruling on application for temporary injunction will not be disturbed by this Court unless plainly arbitrary. But here there was no reason at all why the restraining order should have been denied. Clearly the harm to the tenant forced to move during the pendency of the appeal was very great. The benefit to the landlord, who merely desired to rent to someone else, presumably without children, was negligible or nonexistent. The landlord was fully protected because the tenant had continued to pay the rent to his attorney pursuant to agreement (R. 77). Moreover, denial of the stay was highly prejudicial to the Administrator as well as the tenant, for the court's later holding that these cases were moot because the tenant had been evicted made it impossible for the Administrator to secure a review in the Circuit Court of Appeals of the District Court's decision that it had no jurisdiction. The Court is respectfully referred to pp. 7–10 of our brief in the *Dicken* case, No. 1118, for an amplified statement of the reasons why the denial of a restraining order pending appeal is an abuse of discretion in these circumstances.

III

THE DISTRICT COURT ERRED IN HOLDING THAT IT WAS WITHOUT JURISDICTION TO ENTERTAIN THE ACTION

The District Court dismissed the actions solely on the ground that if was without jurisdiction to entertain them. It did not pass upon the Administrator's claim that the eviction was a violation of the rent regulation. For purposes of the jurisdictional question, it must be assumed that we are dealing with an unlawful eviction. If this Court decides that the District Court has jurisdiction to restrain evictions which violate the regulation the case should then be remanded to the District Court for findings and conclusions on the question of violation.

In reaching its conclusion, the District Court reasoned that Section 205 (c) gives the federal and the state courts concurrent jurisdiction over all proceedings other than criminal, that, accordingly, the local magistrate's court has equal jurisdiction with it to determine the lawfulness of the eviction, and therefore, that Section 205 (c) itself deprived the federal court of power to enjoin the previously instituted local proceeding (R. 20–21). This decision disregards the fact that whatever power and duty the local court had to apply and give effect to the Rent Regulation proceeded, not from Section 205 (c), but from the jurisdiction conferred by the laws of the State and from the obligation imposed by the Supremacy Clause of

the Federal Constitution. The concurrent jurisdiction granted by Section 205 (e) is limited to civil *enforcement suits* under that Section. This Court expressly so declared in *Bowles* v. *Willingham*, 321 U. S. 503, 511–512. Clearly the suit by the Lees in the local court to evict Beever was neither a suit "under Section 205" as specifically required by the concurrent jurisdictional provision in Section 205 (e), nor an enforcement action at all.

In the *Willingham* case this Court stated (p. 512):

> * * * Under the present Act all jurisdiction has not been withheld from state courts, since they have concurrent jurisdiction over all *civil enforcement* suits brought by the Administrator. § 205 (e) * * * [Italics supplied.]

The Court also declared (p. 511n):

> It is true that § 205 (e) gives to state and territorial courts concurrent jurisdiction of all proceedings (except criminal proceedings) under § 205 of the Act. But they embrace *only enforcement suits brought by the Administrator*, not suits brought to restrain or enjoin enforcement of the Act or orders or regulations thereunder. [Italics supplied.]

The text of Section 205 demonstrates that there can be no question that only enforcement actions are included within the "proceedings under section 205" referred to in Section 205 (e). This

appears clearly from the official title of the Section ("Enforcement"), from the fact that the Section provides only for various types of enforcement proceedings and for limitations upon such proceedings, and from the fact that Section 205 (*e*) itself declares that with certain exceptions "such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred."

As this Court noted in the *Willingham* case (p. 510): "By § 205 (a) the Administrator is given authority to seek injunctive relief in the appropriate court (including the federal district courts) against acts or practices in violation of § 4 * * *." The attempt at eviction here was itself a violation of the Rent Regulation and therefore of Section 4 of the Act. In conferring concurrent jurisdiction to enforce the Act upon state courts, Congress clearly did not intend to grant the state courts authority to proceed with unlawful eviction proceedings or to render such proceedings immune from the injunctive power of the federal court under Section 205 (a). Moreover, this Court has already held, in *Case* v. *Bowles*, No. 261, this Term, decided February 4, 1946, that a district court should have granted an injunction against the completion of a sale at over-ceiling prices by a state, even though the highest court of the state, which was under a duty to obey the regulation, had previously held the sale valid.

No contention is made, as claimed by the respondent, that all eviction proceedings in state courts are *per se* illegal under the rent regulation and subject to injunction at the suit of the Administrator. On the contrary the regulations specify circumstances under which the landlord is free to evict the tenant in the state courts. What was sought to be enjoined here was an eviction which was illegal under the regulations which prohibit eviction "so long as the tenant continues to pay the rent". Since it appeared to the Administrator that the attempted eviction in this case was unlawful, he had a right under Section 205 (a) to seek to enjoin it in the federal court. The fact that the issue in the federal court may be the same as that before the local evicting court, i. e., whether the tenant has continued to pay his rent, does not mean that the District Court is without jurisdiction to enjoin the eviction if it finds that the rent regulation was violated. The Administrator, acting in the public interest is entitled to the independent judgment of the enforcement court on the issue of violation, irrespective of whether the same issue has been or may be determined in a proceeding in the local courts to which the Administrator has not been a party. *Bowles* v. *Hayes*, (C. C. A. 3), decided April 17, 1946; *Brown* v. *Wright*, 137 F. 2d 484 (C. C. A. 4); *Henderson* v. *Fleckinger*, 136 F. 2d 381 (C. C. A. 5); cf. *Case* v. *Bowles*, No. 261, this Term, decided February 4, 1946.

As we show in our brief in the *Dickey* case, Section 265 of the Judicial Code has no bearing on the issues of the present case. The question to be decided, therefore, is whether in the absence of the bar of Section 265, a federal court may enjoin proceedings in a state court. That the district court had jurisdiction in the strict sense to do so is clear, and its decision that it was without jurisdiction here was plainly erroneous. Cf. *Smith* v. *Apple*, 264 U. S. 274, 278-280; *Sovereign Camp Woodmen of the World* v. *O'Neill*, 266 U. S. 292, 298.

The Administrator cannot adequately protect the public interest if deprived of his right to sue in the federal court to restrain state court eviction proceedings. Clearly the tenant's right to defend himself in the state court does not safeguard the public interest, for tenants, who are frequently impecunious, may prefer surrendering the premises to enduring the difficulties and costs of litigation. To bar the Administrator's suit on the ground that the tenant could have appealed, perhaps eventually to this Court, would be utterly unrealistic and, of course, the suit against the tenant is not a proceeding to which the Administrator is a party, and thus would not be binding upon him.

Nor should the Administrator be required to intervene in the local proceeding against the tenant and obtain access to a federal court only

through ultimate appeal to this Court. Since eviction suits are commonly handled in a summary and speedy manner, erroneous judgments of eviction are frequently entered without the Government's having had an opportunity to make its views known. Often the first knowledge the Administrator may have of a threatened unlawful eviction will be obtained after a writ authorizing the Sheriff to evict has been issued. An illustration is the *Dicken* case, No. 1118, in which a writ of possession was issued in a state probate proceeding. Moreover, the enormous number of eviction cases [6] makes it impossible for the Administrator to investigate all of them adequately before the trial in the state courts. In many instances the facts concerning the violation of the regulation do not emerge until the tenant's case is developed at the trial, when it is too late to intervene. Unless a quick and effective means of protecting the tenants and enforcing the regulations is available, circumvention of the rent and eviction control system is threatened.

Nor is the possibility of intervention by the Administrator in the state action a relevant consideration. "The law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger * * * Unless duly summoned to

[6] In 1945, more than one million eviction cases were brought to the attention of the Administrator by the filing of eviction notices or requests for eviction certificates.

appear in a legal proceeding, a person not a privy may rest assured that a judgment recovered therein will not affect his legal rights." *Chase National Bank* v. *Norwalk*, 291 U. S. 431, 441. And Section 265 does not bar a stranger to a state court action from securing a federal injuction against the enforcement of the state court's decree. *Hale* v. *Bimco Trading Inc.*, 306 U. S. 375.

Furthermore, intervention in the state court proceedings by the Administrator is not adequate for law enforcement purposes. While Section 205 (d)* of the Act authorizes the Administrator to intervene in a suit in which a party relies for ground of defense upon a regulation, should the tenant fail to invoke the regulation the Administrator may have no right to intervene. Under state court appellate practice, if the tenant chooses not to prosecute his own appeal, the Administrator's right to appeal, which is not expressly conferred by Section 205 (d), may be denied, as it has been in *Anderson* v. *Carder*, 159 Kan. 1, 150 P. 2d 754. And moreover if the Administrator took the case to the highest state court, his right to seek review in this Court would not be clear if the tenant had not also appealed.

---

*"In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder the court having jurisdiction of such suit or action shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action."

See *United States v. Johnson*, 319 U. S. 302, 303, in which the point was raised by the Court but not decided. Cf. *Fishgold v. Sullivan Drydock Corp.*, No. 970, awaiting decision.

But even if all of these obstacles were removed intervention alone would not give the Administrator the relief to which he is entitled.[8] Where a defendant has engaged in violations of the Act an injunction may be sought and obtained in a proper case. The inferior state courts in which eviction proceedings are generally instituted seldom have equity jurisdiction to afford the Administrator relief under Section 205 (a) to restrain unlawful acts and practices. While it is true that there might be another state court in which the Administrator might institute an injunction action, if he were successful in intervening he would still be burdened with two suits instead of one, and no reason appears why he should be compelled to secure compliance with an emergency federal statute in a state equity court rather than a federal one. Manifestly, the decision to institute one proceeding in the federal district court rather than subject the enforcement of the Act to the delays of state court proceedings was the only

[8] The decision in *Bowles v. Willingham*, 321 U. S. 503, dealt primarily with Section 265 of the Judicial Code, but it may be pointed out that there the Administrator was already a defendant in a state court proceeding before he instituted his federal injunction suit, and while he might have appealed to the Supreme Court of Georgia and to this Court the possibility of that course of procedure was not held to be a bar to his federal injunction suit.

course consistent with proper administration of the Act. As Judge Parker stated in *Brown* v. *Wright*, 137 F. (2d) 484, 488 (C. C. A. 4th):

> If the Administrator were denied injunctive relief from threatened violation because of the pendency of state court proceedings and were required to intervene in such proceedings for relief, resulting delays might well render the act nugatory in states not in sympathy with the legislation. The federal government is not so impotent that it must depend upon instrumentalities of the states for the enforcement of legislation so vital; * * *.

In the present case the Administrator, believing that the Lees were engaged in circumvention and evasion of the Act, instituted the action to restrain not only the eviction of Beever but of other tenants who might be subjected to the same practices on the part of the landlord and to restrain the commission of other violations by the Lees in the future. The decision of the District Court would cut out from the area in which the Administrator may act under Section 205 (a) all cases in which landlords have brought their unlawful conduct under the aegis of a state court proceeding. It would apply as well to cases of eviction without a certificate as to cases involving the payment and non-payment of rent, since the state court is also competent to determine whether or not a certificate should have been applied for under the regula-

tion. The Administrator's experience during the critical and ever-sharpening housing crisis has not indicated that effective control over the situation could be obtained without seeking the aid of a federal court, but that on the contrary widespread circumvention and evasion would result.

CONCLUSION

For the foregoing reasons the judgments of the court below should be reversed, with instructions to the District Court to determine the cases on the merits.

Respectfully submitted.

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ROBERT L. STERN,
Special Assistant to the Attorney General.

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Deputy Administrator for Enforcement,

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Office of Price Administration.

MAY 1946.

APPENDIX

A. *The Statutes*

The pertinent provisions of the Emergency Price Control Act of 1942, 56 Stat. 23, as amended (50 U. S. C. App. Supp. IV, Secs. 901, *et seq.*), are Sections 2 (d), 4 (a), 4 (b) and 205.

SEC. 2. * * *

(d) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule

effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder.

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(b) Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more

than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.

(e) The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act; and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Except as provided in section 205 (f) (2), such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found: *Provided, however, That all suits under subsection (e) of this section shall be brought in the district or county in which the defendant resides or has a place of business, an office, or an agent.*[1] Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Administrator or the United States Government in any proceeding under this Act.

[1] Added by sec. 108 (a) of Stabilization Extension Act of 1944.

(d) No person shall be held liable for damages or penalties in any Federal, State, or Territorial court, on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this Act or any regulation, order, price schedule, requirement, or agreement thereunder, or under any price schedule of the Administrator of the Office of Price Administration or of the Administrator of the Office of Price Administration and Civilian Supply, notwithstanding that subsequently such provision, regulation, order price schedule, requirement, or agreement may be modified, rescinded, or determined to be invalid. In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder the court having jurisdiction of such suit or action shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action.

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, *within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which*

the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation.[2] For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; *and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price.*[3] If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer *either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by*

[2] As amended by sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language:

"* * * bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

[3] Added by sec. 108 (b) of Stabilization Extension Act of 1944.

the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.[4] *[The amendment made by subsection (b), insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall be applicable only with respect to violations occurring after the date of enactment of this Act. In other cases, such amendment shall be applicable with respect to proceedings pending on the date of enactment of this Act and with respect to proceedings instituted thereafter.]*[5]

---

[4] As amended by sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language:

"* * * is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act."

[5] Sec. 108 (c) of Stabilization Extenson Act of 1944.

(f) (1) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act and to assure compliance with and provide for the effective enforcement of any regulation or order issued or which may be issued under section 2, or of any price schedule effective in accordance with the provisions of section 206, he may by regulation or order issue to or require of any person or persons subject to any regulation or order issued under section 2, or subject to any such price schedule, a license as a condition of selling any commodity or commodities with respect to which such regulation, order, or price schedule is applicable. It shall not be necessary for the Administrator to issue a separate license for each commodity or for each regulation, order, or price schedule with respect to which a license is required. No such license shall contain any provision which could not be prescribed by regulation, order, or requirement under section 2 or section 202: *Provided,* That no such license may be required as a condition of selling or distributing (except as waste or scrap) newspapers, periodicals, books, or other printed or written material, or motion pictures, or as a condition of selling radio time: *Provided further,* That no license may be required of any farmer as a condition of selling any agricultural commodity produced by him, and no license may be required of any fisherman as a condition of selling any fishery commodity caught or taken by him: *Provided further,* That in any case in which such a license is required of any person, the Administrator shall not have power to deny to such person a license to sell any

commodity or commodities, unless such person already has such a license to sell such commodity or commodities, or unless there is in effect under paragraph (2) of this subsection with respect to such person an order of suspension of a previous license to the extent that such previous license authorized such person to sell such commodity or commodities.

(2) Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this subsection, or has violated any of the provisions of any regulation, order, or requirement under section 2 or section 202 (b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is applicable to such person, a warning notice shall be sent by registered mail to such person. If the Administrator has reason to believe that such person has again violated any of the provisions of such license, regulation, order, price schedule, or requirement after receipt of such warning notice, the Administrator may petition any State or Territorial court of competent jurisdiction, or a district court subject to the limitations hereinafter provided, for an order suspending the license of such person for any period of not more than twelve months. If any such court finds that such person has violated any of the provisions of such license, regulation, order, price schedule, or requirement after the receipt of the warning notice, such court shall issue an order suspending the license to the extent that it authorizes such person to sell the commodity or commodities in connection with which the violation oc-

curred, or to the extent that it authorizes such person to sell any commodity or commodities with respect to which a regulation or order issued under section 2, or a price schedule effective in accordance with the provisions of section 206, is applicable; but no such suspension shall be for a period of more than twelve months. For the purposes of this subsection, any such proceedings for the suspension of a license may be brought in a district court if the licensee is doing business in more than one State, or if his gross sales exceeded $100,000 per annum. Within thirty days after the entry of the judgment or order of any court either suspending a license, or dismissing or denying in whole or in part the Administrator's petition for suspension, an appeal may be taken from such judgment or order in like manner as an appeal may be taken in other cases from a judgment or order of a State, Territorial, or district court, as the case may be. Upon good cause shown, any such order of suspension may be stayed by the appropriate court or any judge thereof in accordance with the applicable practice; and upon written stipulation of the parties to the proceeding for suspension, approved by the trial court, any such order of suspension may be modified, and the license which has been suspended may be restored, upon such terms and conditions as such court shall find reasonable. Any such order of suspension shall be affirmed by the appropriate appellate court if, under the applicable rules of law, the evidence in the record supports a finding that there has been a violation of any provision of such license, regulation, order, price schedule, or require-

ment after receipt of such warning notice. No proceedings for suspension of a license, and no such suspension, shall confer any immunity from any other provision of this Act: *Provided, That no regulation, order, license, or requirement heretofore or hereafter issued or prescribed pursuant to section 2 (a) (2) of the Act of June 28, 1940, as amended by the Act of May 31, 1941, and by title III of the Second War Powers Act, 1942, may validly contain any requirement as to the observance of any regulation, order, license, or requirement issued or prescribed pursuant to this Act or the Stabilization Act of October 2, 1942.*[6]

(g) The district courts shall have exclusive jurisdiction to enjoin or set aside, in whole or in part, orders for suspension of allocations, and orders denying a stay of such suspension, issued by the Administrator pursuant to section 2 (a) (2) of the Act of June 28, 1940, as amended by the Act of May 31, 1941, and title III of the Second War Powers Act, 1942, and under authority conferred upon him pursuant to section 201 (b) of this Act. Any action to enjoin or set aside such order shall be brought within five days after the service thereof. No suspension order shall take effect within five days after it is served, or, if an application for a stay is made to the Administrator within such five-day period, until the expiration of five days after service of an order denying the stay. No interlocutory relief shall be granted against the Administrator under this subsection unless the applicant for such relief shall consent,

[6] Added by sec. 108 (d) Stabilization Extension Act of 1944.

without prejudice, to the entry of an order enjoining him from violations of the regulation or order involved in the suspension proceedings.[7]

B. *The Regulations*

The pertinent provisions of the Rent Regulation for Housing (10 F. R. 3436, 13528) are as follows:

> SEC. 6. *Removal of tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, unless:
>
> (1) *Tenant's refusal to renew lease.* The tenant, who had a written lease or other written rental agreement, has refused upon demand of the landlord to execute a written extension or renewal thereof * * *
>
> (2) *Tenant's refusal of access to landlord.* The tenant has unreasonably refused the landlord access to the housing accommodations for the purpose of inspection or

[7] Added by sec. 108 (e) of Stabilization Extension Act of 1944.

of showing the accommodations to a prospective purchaser, mortgagee, or prospective mortgagee, or other person having a legitimate interest therein: *Provided, however,* That such refusal shall not be ground for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement; or

(3) *Violating obligation of tenancy or committing nuisance.* The tenant (i) has violated a substantial obligation of his tenancy, other than an obligation to pay rent, and has continued, or failed to cure, such violation after written notice by the landlord that the violation cease, or (ii) is committing or permitting a nuisance or is using or permitting a use of the housing accommodations for an immoral or illegal purpose; * * *

* * * * *

(6) *Occupancy by landlord.* The landlord owned, or acquired an enforceable right to buy or the right to possession of, the housing accommodations prior to the effective date of regulation (or prior to October 29, 1942 where the effective date of regulation is prior to that date, or prior to November 6, 1942 for housing accommodations within the Hastings Defense-Rental Area), and has an immediate compelling necessity to recover possession of such accommodations for use and occupancy as a dwelling for himself, or has served during the period of the war emergency in the armed forces of the United States and in good faith seeks possession for his own occupancy. If a tenant has been removed or evicted under this paragraph (a) (6) from housing accommodations, the land-

lord shall file a written report on a form provided therefor before renting the accommodations or any part thereof during a period of six months after such removal or eviction.

(b) *Administrator's certificate*—(1) *Removals not inconsistent with act or regulation.* No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the act or this regulation and would not be likely to result in the circumvention or evasion thereof. The certificate shall authorize the pursuit of local remedies at the expiration of six months after the date of filing of the petition unless the Area Rent Director has determined that a three months' period is adequate for the purposes of the act in the particular area in issuing certificates under section 6 (b) (2), in which event the applicable period shall be three months. Within the discretion of the Area Rent Director the certificate may authorize the pursuit of local remedies for the removal or eviction of the tenant at a time less than six or three months, as the case may be, after the date of the filing of the petition if the petitioner establishes that unusual hardship would otherwise result, or that a lesser period in the particular case is consistent with the purposes of the regulation and the act.

(2) *Occupancy by purchaser.* A certificate shall be issued authorizing the pursuit

of local remedies to remove or evict a tenant of the vendor, for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after the effective date of regulation (or on or after October 20, 1942 where the effective date of regulation is prior to that date, or on or after November 6, 1942 for housing accommodations within the Hastings Defense-Rental Area), only as provided in this paragraph (b) (2).

(i) Where the Administrator finds that the payment or payments of principal made by the purchaser aggregate twenty percent or more of the purchase price, he shall, on petition of either the vendor or purchaser issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law. Except as herein provided and unless the Area Rent Director shall determine that a three months' period is adequate for the purposes of the act in the particular defense-rental area, the certificate shall authorize the pursuit of local remedies at the expiration of six months after the date of filing of the petition.

* * * * *

(ii) Where the Administrator finds (*a*) that equivalent accommodations are available for rent into which the tenant can move without substantial hardship or loss, or (*b*) that the vendor has or had a substantial necessity requiring the sale and that a reasonable sale or disposition of the accommodations could not be made without the removal or eviction of the tenant, or (*c*) that other special hardship would result, or (*d*) the purchaser has, during the period of the war emergency, served in the armed forces

of the United States and requires possession of the accommodations for the adequate housing of himself and family, a certificate may be issued although less than twenty per cent of the purchase price has been paid and may authorize the vendor or purchaser to pursue his remedies for removal or eviction of the tenant at a time less than six or three months as the case may be in any particular area after the date of filing of the petition.

(d) *Notices required*—(1). *Notices prior to action to remove tenant.* Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant. A written copy of such notice shall be given to the area rent office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, unless at least ten days (or, where the ground for removal or eviction is non-payment of rent, the period required by the local law for notice prior to the commencement of an action for removal or eviction in such cases, but in no event less than three days) prior to the time specified for surrender of possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or eviction to the tenant and to the area rent office, stating the ground under this section upon which such removal or eviction is sought and specifying the time when the tenant is required to surrender possession: * * *

Where the ground for removal or eviction of a tenant is non-payment of rent, every notice under this paragraph (d) (1) shall state the rent for the housing accommodations, the amount of rent due and the rental period or periods for which such rent is due. The provisions of this paragraph (d) (1) shall not apply where a certificate has been issued by the Administrator pursuant to the provisions of paragraph (b) of this section.

(2) *Notices at time of commencing action to remove tenant.* At the time of commencing any action to remove or evict a tenant, including an action based upon non-payment of rent, the landlord shall give written notice thereof to the area rent office stating the title of the case, the number of the case where that is possible, the court in which it is filed, the name and address of the tenant, and the ground under this section on which removal or eviction is sought.

(e) *Local law.* No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law.

SEC. 7. *Registration.* * * *

(b) *Receipt for amount paid.* No payment of rent need be made unless the landlord tenders a receipt for the amount to be paid.

BRIEF FOR THE APPELLEE

Nos. 1116-1117

IN THE

Supreme Court of the United States

October Term, 1946.

PAUL A. PORTER, Administrator, Office of Price Administration,

Appellant

v.

DR. LUCAS J. LEE and HAZEL LEE,

Appellees

PAUL A. PORTER, Administrator, Office of Price Administration,

Appellant

v.

HAZEL LEE and LUCAS J. LEE, Agents; and SUE LAKENAN, Justice of the Peace, Covington, Ky.,

Appellees

BRIEF FOR APPELLEES

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Covington, Kentucky,
Attorneys for Appellees

IN THE

Supreme Court of the United States

October Term, 1946

No. 1116

PAUL A. PORTER, Administrator, Office of Price Administration,

Appellants,

v.

DR. LUCAS J. LEE and HAZEL LEE,

Appellees.

No. 1117

PAUL A. PORTER, Administrator, Office of Price Administration,

Appellants,

v.

HAZEL LEE and LUCAS J. LEE, Agent, and SUE LAKENAN, Justice of the Peace, Covington, Ky.,

Appellees.

BRIEF FOR APPELLEES

MAY IT PLEASE THE COURT:

STATEMENT OF FACTS

The instant cases are before this Court on an appeal by the Administrator of Office of Price Administration to reverse the order and judgment of the Sixth Circuit Court of Appeals dismissing appeals from the United States District Court for the Eastern District of Kentucky.

The Appellees in these two cases rented living quarters to R. C. and Sara Beever on or about the 15th day of June, 1942. The terms and conditions of the rental agreement were that commencing on the 18th day of each month the tenants were to pay the rent in advance. October 18, 1944, was the day the rent was due for the succeeding month. It was not paid or tendered on this day. It was not tendered until the 20th day of October, 1944, when an eviction suit was instituted in the Magistrate's Court seeking to evict the tenants on the ground of *non-payment of rent.* (Emphasis added).

Notice of this eviction suit was duly served on the Office of Price Administration as required of the State Courts by the Rent Regulations. Later the tenants, R. C. and Sara Beever, with their attorney appeared in the Magistrate's Court and moved for a continuance for 30 days, and also the representative of the Office of Price Administration likewise appeared in the Magistrate's Court and intervened as amicus curiae in the proceeding. The Magistrate sustained the motion for the 30 day continuance and when the end of the 30 day continuance was reached, or possibly on the last day before trial, the Administrator of the Office of Price Administration through one of its representatives filed a petition in the United States District Court for the Eastern District of Kentucky at Covington, Kentucky, and upon their verified petition that the appeals herein were violating the Rent Regulations obtained a temporary restraining order enjoining the appellees herein and the Magistrate from proceeding further with the eviction suit.

Later a motion was filed by Appellees in the District Court seeking to dismiss the complaints in both actions and to dissolve the temporary restraining order. This motion was sustained on the ground that the institution of an eviction suit for the non-payment of rent in a state

court was not a violation of the rent regulation and further, that inasmuch as the State Courts had concurrent jurisdiction with the Federal courts in civil matters arising under the Emergency Price Control Act of 1942 as mentioned, and since jurisdiction had fastened in the State Court both of the parties and of the subject matter, the District Court was without jurisdiction to restrain or prohibit the State Court from proceeding.

The Administrator then made application to the Sixth Circuit Court of Appeals for reinstatement of the temporary restraining order. This application was denied.

Shortly thereafter the Magistrate entered a judgment in favor of the Appellees sustaining their eviction suit.

The tenants, R. C. and Sara Beever made no effort to appeal the decision of the Magistrate to the Circuit Court of Kenton County, which under Kentucky law they had a right to do, nor did the Administrator or any of his agents seek or demand an appeal from the decision in the Magistrate's Court; instead the tenants vacated the premises.

This concluded the matter until a hearing upon the merits of the appeals was heard in the Sixth Circuit Court of Appeals, at which time Appellees' motion to dismiss both actions on the ground that they were moot because the tenant was no longer in possession was sustained: certiorari then having been granted by this Court the cases are here upon appeal from the ruling of the Sixth Circuit Court of Appeals.

ARGUMENT

I.

INSTITUTION OF EVICTION PROCEEDING FOR NON-PAYMENT OF RENT IN STATE COURT IS NOT A VIOLATION OF THE RENT REGULATIONS.

Counsel for Appellant moves under a misconception of the law and facts in those particular cases. They state on page 2 of their petition for the writ:

> "In order to forestall an eviction in *violation* of the Price Administrator's rent regulation. . . ." (Emphasis our own.)

Counsel concludes that the institution of an eviction suit for the non-payment of rent in the Magistrate's Court in the State of Kentucky constituted a violation of the Price Administrator's rent regulations. This is not so. It may have been so had respondents Lee sought to evict the tenants on grounds where a certificate was required from the Office of Price Administration, but to institute and maintain an action for eviction the grounds of which is *non-payment of rent*, does not require the one instituting the eviction proceeding to obtain a certificate of clearance from the Office of Price Administration. This false idea that respondents Lee were in violation of a price regulation is what brought about the wrongful institution of the injunctive actions in the District Court.

It was cited in argument in the Court of Appeals by counsel for the Administrator that the institution of an eviction suit in a State Court, the grounds of which were non-payment of rent, did not have to come after a clearance by the Office of Price Administration, but Court be instituted at any time, and the legal question as to whether or not the tenant was in default for payment of rent to which the landlord was entitled, was a question which could be decided by the State Court.

After admitting that an eviction suit in the Magistrate's Court on the grounds of non-payment of rent could be maintained without a certificate of clearance in oral argument, they still tried to say that the commencement of such a suit by respondents Lee was a violation of the Price Regulations. This we say is not so, and the regulation itself so provides.

Section 6 of the Rent Regulation for Housing (10 F. R. 3436) is as follows:

> "Sec. 6. *Removal of Tenant*—(a) *Restrictions on removal of tenant. So long as the tenant continues to pay the rent to which the landlord is entitled*, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired, or otherwise terminated, and regardless of any contract, lease, agreement, or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, unless. . . ." (Emphasis our own.)

Also, subsection (b) (1):

> "*Removals not inconsistent with act or regulation.* No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law. . . ."

Therefore, from the foregoing Rent Regulation 6, it is perfectly clear that the institution of an eviction suit, the grounds of which is non-payment of rent, does not require a certificate of authority from the Office of Price Administration and whether the tenant is in fact delinquent

in his rent is a proper legal question to be decided by the State Court. That is all that is involved in this case so far as the Office of Price Administration is concerned.

Also, section (D) subsection (2) of the Rent Regulation for Housing distinguishes between the institution of an eviction suit on the grounds of non-payment of rent from the institution of eviction action on other grounds, it providing among other things as follows:

> "No tenant shall be removed or evicted from housing accommodations by court process or otherwise, unless at least ten days (or, where the ground for removal or eviction is non-payment of rent, the period required by the local law for notice prior to the commencement of an action for removal or eviction in such cases, but in no event less than three days). . . ."

Only in this Court has counsel for Appellant contended that the institution of an eviction suit in the State Court on the ground of non-payment of rent is a violation of the Rent Regulation.

II.

TENANTS HAVING VACATED WITHOUT APPEALING THE JUDGMENT OF THE MAGISTRATE'S COURT OR WITHOUT HAVING A WRIT OF POSSESSION EXECUTED UPON THEM, CONCLUDED THE CONTROVERSY AND THE QUESTION IS NOW THEREFORE MOOT.

On motion of respondents Lee in the Circuit Court of Appeals, the Court being fully advised in the premises adjudged that the controversy having ceased by the removal of the tenants, R. C. and Sara Beever from the respondent's (Lee) premises, it therefore became a moot question.

There is nothing in the record to show that the tenants or the Office of Price Administration, though being duly notified of the pendency and nature of the suit in the Magistrate's Court, sought or desired an appeal to the Kenton County Circuit Court under Kentucky law, which they had a right to do. Having failed to exercise the right of appeal granted them under local law and having removed themselves from the premises involved in the litigation, the tenants R. C. and Sara Beever made the issues involved in the alleged complaint in the District Court moot as a matter of law, and therefore the Court of Appeals properly adjudged that the appeal should be dismissed.

These same premises have now again been rented to other individuals who are clothed with the same protection the Beevers had, and while the question is not presented for decision here, it might well be asked, how can the Court now evict the people who are in possession of these same premises after they were vacated by the tenants Beever?

III.

STATE COURTS HAVE CONCURRENT JURISDICTION WITH FEDERAL COURTS IN CIVIL MATTERS.

It is provided in Section 205 (e) of the Emergency Price Control Act as follows:

> "The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act, and, *concurrently with state and territorial courts, of all other proceedings under section 205 of this Act.*" (Emphasis added.)

In construing this particular language in the case of *Bowles* v. *Willingham*, 321 U. S. 503, the Supreme Court stated:

"Under the present act all jurisdiction has not been withheld from state courts, since they have concurrent jurisdiction over all civil enforcement suits brought by the Administrator."

So, by a recent decision of the Supreme Court the State Court had concurrent jurisdiction with the Federal Court and this is the basis upon which the District Court dismissed the complaints.

CONCLUSION

1. The institution of an eviction suit in the Magistrate's Court, on the ground that the tenant has failed to pay the rent to which the landlord is entitled, is not a violation of the Rent Regulation, but is expressly authorized by same.

2. The tenant in the instant litigation having vacated the premises, made the controversy moot, and therefore, the decision of the Court of Appeals dismissing the appeals was well founded.

3. The State Court, under express provisions of the Emergency Price Control Act, having concurrent jurisdiction with the Federal Courts on civil matters, and jurisdiction over the subject matter and the parties having been vested in this case in the Magistrate's Court first, the Administrator cannot now resort to the Federal Courts because he does not like the decision of the State Court, and by so doing attempt to substitute a judgment of the Federal Court for the judgment of the State Court, when he had notice of the action in the State Court and appeared there as amicus curiae to the Court.

From the foregoing we respectfully urge the Court to dismiss the appeals and affirm the judgment of the Sixth Circuit Court.

Respectfully submitted,

SAWYER A. SMITH,
HOWELL W. VINCENT,
Covington, Kentucky,
Attorneys for Appellees.

This is to certify that a copy of the foregoing response was this day deposited in the United States Mail in an envelope addressed to Robert L. Stern, Assistant Solicitor General, Washington, D. C. This the —— day of May, 1946.

HOWELL W. VINCENT

SUPREME COURT OF THE UNITED STATES.

Nos. 1116 and 1117.—October Term, 1945

Paul A. Porter, Administrator, Office of Price Administration, Petitioner,
1116 vs.
Dr. Lucas J. Lee and Hazel Lee.

Paul A. Porter, Administrator, Office of Price Administration, Petitioner,
1117 vs.
Hazel Lee and Lucas J. Lee, Agent, and Sue Lakenan, Justice of the Peace, Covington, Kentucky.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[May 27, 1946.]

Mr. Justice Black delivered the opinion of the Court.

October 24, 1944, Dr. Lee brought a forcible detainer suit in the Justice of the Peace Court of Kenton County, Kentucky, to recover possession of an apartment he had rented to R. C. and Sarah Beever by reason of an alleged nonpayment of rent due on October 18, 1944. On December 4, 1944, before any judgment had been rendered, the Price Administrator, under Section 205 of the Emergency Price Control Act, 56 Stat. 23, sought an injunction in the federal District Court to order respondents, Dr. and Mrs. Lee, not to prosecute eviction proceedings against "Beever or any other tenant" and to restrain them from violating the Rent Regulation for Housing, 10 F. R. 3436, 1352s, promulgated pursuant to the Emergency Price Control Act.[1] That Regulation provides among other things that so long as the tenant continues to pay the rent to which the landlord is entitled no tenant shall be removed or evicted by any landlord. The Administrator's complaint in the injunction proceeding alleged that Beever owed no rent; that tender of the rent due had been refused by Dr. Lee; that this had been done not because there had

[1] The part of the Regulation here in question (Section 6) was promulgated pursuant to Section 2(d) of the Emergency Price Control Act, 56 Stat. 23, which authorizes the Administrator whenever such action is necessary or proper in order to effectuate the purposes of the Act, to "regulate or prohibit . . . renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in . . . rent increases . . . inconsistent with the purposes of this Act."

been a default in payment but rather because Dr. Lee did not want families with children, such as the Beevers, living on the premises; and that the eviction proceeding, thus, violated the Rent Regulation for Housing. The District Court issued a temporary restraining order, but later without passing on the disputed factual issue of whether Beever had actually been delinquent in paying his rent at the time of the commencement of the Justice of the Peace Court proceedings, dismissed the Price Administrator's complaint on the ground that it lacked jurisdiction to enjoin the Lees from prosecuting eviction proceedings in the state court. *Bowles* v. *Lee*, 59 F. Supp. 639.[2] The Justice of the Peace Court on the landlord's motion then dismissed the forcible detainer action and on June 25, 1945, a new action was brought in the same Justice of the Peace Court asking for a writ of restitution to remove the Beevers on the ground of non payment of rent. The Justice of the Peace Court then entered a judgment directing the eviction of the Beevers. The Price Administrator this time asked the federal District Court to restrain enforcement and execution of the judgment of eviction. This action by the Price Administrator was again dismissed on the ground of lack of jurisdiction.

The Price Administrator appealed from both District Court orders dismissing his complaints and made prompt application to the Circuit Court of Appeals for an injunction pending appeal in the first case. This motion was denied. The landlord moved to have the case dismissed as moot and in support of that motion filed an affidavit setting forth that the premises had been vacated by the Beevers. In response the Price Administrator submitted an affidavit by R. C. Beever stating that he had not vacated the apartment as a matter of choice, but had moved to several basements and into the home of his wife's parents because he was compelled to do so by a writ of possession which had been served on him. The Circuit Court of Appeals dismissed both cases as moot. We granted certiorari because of the obvious importance of the questions raised by the federal District Court's dismissals for want of jurisdiction and the holding of the Circuit Court of Appeals that the proceedings had become moot.

First. As to jurisdiction, the provisions of the Price Control Act and the Rent Regulation for Housing, promulgated pursuant thereto and not challenged here, make it clear that

[2] The original petition for injunction was filed by Chester Bowles as Price Administrator. Petitioner Porter is his successor in office, and upon motion he has been substituted as petitioner in this Court.

Price Administrator's allegations in his complaint before the District Court stated an enjoinable violation over which the District Court as an enforcement court ordinarily would have jurisdiction under 205(a) and (e) of the Act. But the landlord claims that here the District Court was without power to act because the provisions of Section 205(e) permit actions in state courts alone under the particular circumstances here. He relies on that part of subsection (e) which provides that "The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act, and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act." The landlord's argument is as follows: The Administrator's proceeding in the federal District Court was a proceeding under Section 205 over which the state courts have concurrent jurisdiction. The only issue in the federal proceeding would have been whether the landlord had legally sought to evict the Beevers because of non-payment of rent or whether eviction was sought for other reasons in violation of the applicable regulation. That question could have been raised in the Justice of the Peace Court in view of its "concurrent" jurisdiction under Section 205 (e). Since the Justice of the Peace Court action by the landlord was commenced prior to the Administrator's injunction proceeding in the federal court, the Justice of the Peace Court had acquired sole power to decide the crucial issue and the federal District Court therefore lacked jurisdiction.

We think this contention is without merit. Section 205 (e) gives the state courts concurrent jurisdiction only over non-criminal enforcement "proceedings under Section 205." *Bowles v. Willingham*, 321 U. S. 503, 511-512. Here the landlord's eviction proceeding in the Justice of the Peace Court clearly was not an enforcement proceeding authorized by the Act. It was, rather, if the allegations of the Administrator proved to be true, a violation of the Act. The state court's jurisdiction was based on state law and not on Section 205 of the Price Control Act. It was therefore not part of the "concurrent" jurisdiction contemplated by 205. Over the enforcement proceedings contemplated by that section not only did the District Court acquire jurisdiction first, but the state court never acquired any jurisdiction at all. It was consequently within the power of the federal District Court to grant the injunction provided the Government succeeded in proving the merits of its case.

To rule otherwise would require the Administrator to bring enforcement proceedings in situations, such as the one before us,

always in the state courts. Such a requirement would certainly not be in accord with the "concurrent" jurisdiction provision of Section 205(c). Or the Administrator in order to protect the public interest would always be forced to intervene in state court proceedings brought by the landlord. This procedure would be inadequate, because the speedy manner in which eviction suits are handled will frequently make it too late to intervene when the Administrator becomes aware of a violation. Furthermore, justice of the peace courts do not, at least ordinarily, have jurisdiction to grant injunctions to prevent future violations of the Act. Since there is nothing in the Act that limits the Administrator's action to intervention in the state courts we see no reason, nor are we authorized, to so restrict him.[3]

Second. We also think the Circuit Court of Appeals erred in holding that the case was moot. The mere fact that the Beevers in order to comply with the writ of possession vacated the apartment was not enough to end the controversy. It has long been established that where a defendant with notice in an injunction proceeding completes the acts sought to be enjoined the court may by mandatory injunction restore the *status quo*. *Texas & New Orleans R. R. Co.* v. *Northside Belt Ry. Co.*, 276 U. S. 475, 479. The Administrator, therefore, was entitled to seek a restoration of the *status quo* in this case. See *Henderson* v. *Fleckinger*, 136 F. 2d 381-382. Moreover, here the Administrator sought to restrain not merely the eviction of Beever but also that of any other tenant of the landlord as well as other acts in violation of the Regulation. Section 205(a) authorizes the district court in its discretion to grant such a broad injunction upon a finding that the landlord has engaged in violations. See *Hecht Co.* v. *Bowles*, 321 U. S. 321. If the eviction proceeding actually was a violation of the Regulation then Beever's vacating the premises was merely the completion of one violation. The issue as to whether future violations should be enjoined was still before the Court and was by no means moot.

The judgments of the Circuit Court of Appeals are reversed and the cases are remanded to the District Court for trial of the issues on the merits.

It is so ordered.

Mr. Justice JACKSON took no part in the consideration or decision of these cases.

[3] And for the reasons stated in Porter v. Dicken, No. 1118, decided this day, § 265 of the Judicial Code does not require a different result.